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JAMES H. RUTTER,

THIRD VICE-PRESIDENT,

N. Y. C. & H. R. R.R. CO.,

ON

ASSEMBLY BILL

No. 22.

BEFORE THE COMMITTEE ON RAILROADS OF THE
ASSEMBLY, LEGISLATURE OF THE STATE
OF NEW YORK, MARCH 10, 1880.

21811

24 Ap 23 HALLER

THE BILL.

AN ACT

To regulate the transportation of freight by railroad corporations.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SEC 1. Every railroad corporation shall give to all persons reasonable and equal terms, facilities and accommodations for the transportation of themselves, their agents and servants, and of any merchandise or other property of every kind and description, upon any railroad owned or operated by such corporation and for terminal handling, the use of the depot and other buildings and grounds of such corporation, and at any point where its railroad shall connect with any other railroad, reasonable and equal terms and facilities of interchange, and shall promptly forward merchandise consigned or directed to be sent over another road connecting with its road, according to the directions contained thereon or accompanying the same.

§ 2. No railroad corporation shall charge or receive for the transportation of freight to any station on its road a greater sum than is charged or received for the cotemporaneous transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on its road in the same direction. Two or more railroad corporations, whose roads connect, shall not charge or receive for the transportation of freight to any station on the road, of either of them, a greater sum than is charged or received for the cotemporaneous transportation of the like class and quantity of freight from the same original point of departure, to a station at a greater distance on the road of either of them in the same direction.

§ 3. No railroad corporation shall grant or allow to any person or association upon the transportation of freight, either directly or indirectly, any secret rate, rebate, drawback, unreasonable allowance for use of cars or any undue advantage whatever; nor directly or indirectly charge to or receive from any person or persons, or association or corporation any greater or less sum, compensation or reward than is charged to or received from any

other person or persons, association or corporation for like and cotemporaneous service in the receiving, transporting, storing, delivering or handling of freight, nor shall any railroad corporation charge more for transporting freight from any point on its line than a fair and just proportion of the price it charges for the same kind of freight transported from any other point.

Nor shall any railroad corporation charge more for transporting freight from one local station to another, or from a local station to a terminus, than they charge for a like and cotemporaneous service from one terminus to another.

§ 4. The car load is hereby made the unit of shipment, and no railroad corporation, nor two or more railroad corporations whose roads connect, shall charge or receive for the transportation of two or more car loads of freight a greater or less sum per car load than is charged or received for a single car load of a like class of freight for a cotemporaneous shipment between the same points upon such road or roads; except that any railroad corporation of this State, whose terminus is upon or near the border of the State, when receiving freight by the train load, of not less than twenty cars, from a connecting road, not lying wholly within this State, consigned to a single point, and which involves no terminal handling at the point of reception on the part of such New York road, save attaching an engine to the already made up train, may make a difference in the rate per car load upon the freight so received equal to, but not greater than, the cost at such point of reception, of loading each car of an equal train with a like class of freight. In the construction of this act the sum charged or received for transportation of freight shall include all terminal charges, and the road of a corporation shall include all the road in use by such corporation, whether owned or operated under a contract or lease.

§ 5. Any railroad corporation which violates any of the provisions of this Act, in addition to liability for all damages sustained by reason of such violation, shall be liable for each offence to a penalty of one hundred dollars, which may be recovered in an action of tort, in any county where such corporation has property, to his own use by the party aggrieved, or to the use of the State by the attorney-general, or to the use of county by the district attorney of the county in which such violation was committed, provided, however, that no such action shall be maintained unless the same shall be brought within one year from the date of such violation.

§ 6. This act shall take effect immediately.

MR. CHAIRMAN :

The bill before your Honorable Committee, now under discussion appears to be a patchwork made up of the laws of different States of the Union, and thrown together without much regard to consistency.

The most objectionable feature of the bill is contained in section 3, being purely and simply *pro rata*, and as it is said to have been taken from the Laws of Iowa, in order to satisfy myself as to there being such a law, I telegraphed an officer of the Chicago and Northwestern Railway making inquiry, and before proceeding to review the bill generally, I beg leave to read the answer I received.

“CHICAGO, March 9, 1880.

“J. H. RUTTER :

“Your despatch of the 6th received. No western State in which we run, has at any time attempted by legislation to make the minimum rates upon through traffic the measure of compensation for the transportation of local freight. Chapter 68 of the Laws of Iowa, eighteen seventy-four, prescribed a uniform classification and a table of rates of freight, with percentages of increase and decrease from such fixed rates, to be charged by three classes of roads in the State, the class of each to be determined by their gross earnings per mile on the previous year's business. Section 10 of chapter 68 reads as follows : ‘No railroad company shall charge any person, company or corporation, for the transportation of any property a greater sum than it shall at the same time charge and collect from any other person, company or corporation for a like service, from same place and upon like conditions and all concessions of rates, drawbacks and contracts for special rates, founded upon the demands of commerce and transportation, shall be open to all persons, companies and corporations alike.’ This law was repealed by chapter seventy-seven, laws of eighteen seventy-eight, except sections 1, 2 and 7, which refer to passenger rates and making of reports.

“H. C. WICKER.”

By this you will observe that the law of Iowa, such as it was, bore no resemblance to the *pro rata* features of section 3, which purports to be copied from it, and further that it was repealed before the Special Committee to investigate railroads of this State was created.

As regards other State laws, I have not examined them to ascertain how correctly they have been copied, or to what extent they have been changed to make them apply more onerously upon the railroads of this State, and especially upon the New York Central, which is the only actually State road of all the trunk lines reaching the seaboard at New York, and the lakes at their western termini.

In copying these laws, no consideration seems to have been given the New York Central and Hudson River R.R. as having

a waterway competing with nearly every station on its entire length, and had the bill been framed for the express purpose of crippling this road and all the industries upon or contiguous to its line, it could not have been better (or, if you please, *worse*) done.

With your permission I will now proceed to review the entire bill.

While this bill, as its title shows, purports only to control, or regulate freight transportation, the very first section starts out with the provision that

"Every railroad corporation shall give to all persons reasonable and equal terms, facilities and accommodations for the transportation of themselves, their agents and servants, and of any merchandise or other property," &c.

So it is clear that although nominally an exclusive freight measure, it in reality aims to regulate passenger traffic as well, while as a freight measure it is fatally defective inasmuch as it wholly ignores the great system of water lines in the State and their influence upon the movements of commerce.

The introduction of the words "agents and servants" invites conjecture as to the actual meaning of this section of the bill since agents and servants are "persons," and by the terms of this Act the roads are required to give "all persons" equal terms, accommodations, &c.

Unless there are "agents and servants" not classed as members of the human family, this section must be construed as prohibiting two rates of fare on the same train, and as limiting the roads to the use of cars of one description only. This of course would exclude sleeping and drawing-room cars from all railroads in the State, notwithstanding that the Investigating Committee reported, at least so far as the Wagner Company is concerned, that the use of their cars is not only "valid" under the general law, but a great convenience to the public, a benefit to stock holders in the road (who own less than a majority of the stock of the Drawing-room and Sleeping Car Company), and that there is "no cause for complaint," the "first-class passenger fare on the New York Central and Hudson River road, plus drawing-room and sleeping car fare, being less than first-class passenger fare alone on any other road in the world." In framing this section of the bill the Investigating Committee have virtually repudiated their own report. Then again, this section might be construed as requiring a road to extend to the agents and servants of all other roads, whether competing roads or not, the same "facilities," &c., as are necessarily given its own employes.

It is customary for roads to issue at times what are known as second-class tickets, good on first-class trains but which limit passengers to the use of the smoking cars. It has also been the custom at times to issue tickets at second-class rates for servants who are permitted to accompany their masters or mistresses in first-class cars. If by "servants" such cases are included, it would do the railroads in this State an injustice to compel them to discontinue an accommodation to the public, common to roads out of the State. In that case passengers coming East or going West would take roads entirely out of the State, or inter-State roads which could evade the law.

It is also customary for special rates to be made for Sunday schools, excursion parties, political conventions, Masonic societies, theatrical companies and other bodies, and such rates often induce this kind of travel. This bill would prohibit such arrangements altogether.

On nearly all railroads it is the rule not to permit drunken or disorderly persons to ride in the better class of cars, and with respectable, orderly passengers. It is likely that for the purpose of obtaining the penalty persons might act disorderly, and under this Act they could not be expelled from among the better class of passengers. If it were desired to turn the tide of emigration away from the port of New York to the ports of Philadelphia and Baltimore, and thus throw the transportation of emigrants from the seaboard to the West, into the hands of the railroads running through other States than the State of New York, this bill is admirably adapted to the purpose. *The New York Herald*, of March 9, in an able criticism of this bill, alluding to the passenger provision, says:

"The ordinary car must prevail or the palace car or the emigrant car. As the roads will not, of course, immediately put all the fares of ordinary passenger traffic down to the level of the rates with which they now favor the emigrants who land here from Europe on their way to Western farms, then it is clear that the emigrants must be charged what other people are charged. Consequently the very great and politic discrimination now made in their favor, and which it is profitable to make because of the inferior accommodation afforded, will all be done away with in this State. Both the roads in this State, which are now extensive carriers of emigrants must, if this law passes, give emigrants the same accommodation as is given to all other passengers and must charge them the same fare; but we presume that the other roads which carry emigrants—the roads from Philadelphia, from Baltimore and from Boston, as they will be out of the reach of our State law—will continue their present practice of carrying emigrants at low rates, and consequently this traffic will go to them. * * * In case it is the policy of the Legislature to send the emigrants to other cities we can only suggest that it does not seem to us to be a very good one."

It is hardly to be presumed that the framers of the bill realized the full scope of the section under consideration, when they were induced to adopt it, and even this charitable view suggests the probable fallibility of the measure as a whole.

The bill is not clear as to what uses the buildings, depots, grounds and general equipment of roads may be employed for and by "persons, their agents and servants;" "reasonable and equal terms, facilities and accommodations" for the transportation and "terminal handling" of any merchandise or other property of "every kind and description," covers such broad ground that it would seem to make it impracticable to run a railroad. The bill would compel railroads to transport explosives, of which there are certain articles which no railroad will transport knowingly—for instance, nitro-glycerine, dynamite, &c. Neither do railroads transport powder except upon special conditions. The same also applies to matches, petroleum and other explosive or inflammable articles. Under this bill such commodities must have equal use of the buildings and grounds of railroads, and "equal terms, facilities and accommodations" in every respect, as "other property of every kind and description."

The first section of the bill further provides that

"Every railroad" "shall promptly forward merchandise consigned, or directed to be sent, over another road connecting with its road," &c.

If this provision means what it says it would compel the roads in this State to operate against the commercial interests of the City and State of New York, and to become the unwilling tools of competing communities and railroads. The New York Central would be compelled to have business relations with all roads, whether they are competitors or not, and would thus be required to give "equal terms and facilities" to the Grand Trunk of Canada, whose interests are entirely at variance with the interests of this State, and the roads operated in it. Being within the State of New York, wholly, the Central cannot avoid the law, while the Erie could, if it chose, refuse to carry freight consigned to the Grand Trunk Road through New Jersey and Pennsylvania. The "Grand Trunk," or any other railway—for instance, the "Northern Central," in connection with the "Pennsylvania R. R.," the "Lehigh Valley," and others—could make rates over the Central and compel it to take freight, although the Grand Trunk had cut the rates through Canada, and the other roads named had cut them in Pennsylvania, the latter taking goods to

stations on New York lines, paying whatever local rate this bill allowed the New York roads to charge, and which, as will appear, must only be in "proportion" to the lowest rate charged for a long haul.

The roads passing through Pennsylvania to Philadelphia and Baltimore could come upon New York lines, and by cutting their rates in Pennsylvania, make low rates privately and divert trade from New York to those cities before our roads, which would be used as connecting links, discovered the cause of diversion. Then if our lines attempted to meet their rates from certain localities, under the bill they must reduce the greater part, if not the whole, of their tariff proportionately. The roads running to Boston in like manner could cut their rates to below the New York rates and turn trade to Boston. Under the bill New York roads have no protection, while our commerce would fall an easy prey to competing cities and States. It is clear that this provision of the bill will work great injury to New York City's trade with the interior of the State, and with other States, and do our railroads enormous injury.

As a further illustration of its injurious tendencies, roads competing with the Central road, for instance, to and from such points as Utica, Syracuse, Weedsport, Canandaigua, Lyons, &c., can make such special contracts as they deem proper, and then, for instance, from New York, Philadelphia, Boston or Baltimore shippers can compete with merchants from New York who ship by the Central road, that road being compelled to treat all roads alike, giving them equal terms and facilities. To illustrate, a jobber in Syracuse may call upon the Central road for a rate from New York; and a reasonable rate on heavy goods during a certain season of the year would be fifteen cents, and the local rate from Syracuse to a station beyond, five cents, making a total of twenty (20) cents. Now suppose the Central rate to the said station beyond, to be from New York 18 cents; the jobber might go to the D., L. & W. and obtain a special rate of 10 cents to Syracuse, pay us our 5 cents to the point beyond and get the goods through for 3 cents per 100 less than the through rate from New York to that point. Being a large shipper he could no doubt get this rate of 10 cents privately, and in that way beat the New York jobber. Under the bill New York roads cannot protect themselves or the New York jobbers, being obliged to furnish equal facilities of interchange to all connecting roads.

The Special Committee on Railroads admit in their report the importance of reasonable discretionary power in the management of our State railroads, when they say :

“To go to the extreme, urged by some, and compel the publication and posting of rates at all stations within the State, would not only give notice to the public but also to all competing roads.”

Although this bill does not specifically require that rates be published or posted, its operation would be equivalent thereto, for it is evident that under the provision which enforces “equal terms, facilities, &c.,” a knowledge of one transaction would carry with it a knowledge of all cotemporaneous business, and competing roads could strike at our commerce *en masse*, as it were. Again on pages 73 and 74 of their report the Committee say :

“And at all points of contact—and there are many along the Erie and Central also—Pennsylvania and New Jersey roads could make their rates just enough lower to get the business and take it to Philadelphia or Baltimore, or even to New York over their lines. For instance, the Delaware, Lackawanna & Western, in fixing a through rate from Oswego or Utica to New York, can comply with any requirement the Legislature may enact, until they get to the State line and then, unrestricted as they are in Pennsylvania and New Jersey could vary their rates so as all the while to place our own State roads at a disadvantage ; this road, which is a Pennsylvania corporation, might publish its rates at all New York stations, and, for instance, charge twenty five cents per hundred weight from Oswego to the State line, and nothing from there to Jersey City. The line being a continuous one, it would make no difference to its treasury whether the charge was located upon a portion of its line, or the whole of it. The same may be said of the Northern Central running from Canandaigua to Baltimore, and the same of the Buffalo, New York & Philadelphia, running from Buffalo to Philadelphia, and others.”

Thus it will be seen at once, the Committee recognize unmistakably some of the objections advanced to the bill, and in their report furnish substantial arguments against their own final recommendations.

In addition to the injuries to our commerce, unavoidable under the restrictions and prohibitions imposed by this bill, and which are so clearly and well stated by the Committee themselves, the disadvantage of distance we have to contend with is an important consideration, as the following limited table of distances will illustrate :

	Baltimore.	Philadelphia.	New York.
Buffalo to.....	422	442	444
Canandaigua.....	325	345	367
Geneva.....		323	344
Auburn.....		278	320
Syracuse.....		290	294

It is unnecessary to consume time by making comparisons from the various points of contact. The Committee in their report again appear to reach the subject when they say :

“The business of transportation requires the greatest freedom of management of any business extant. This is manifest to the most casual observer. The difficulty and the danger of imposing cast iron regulations upon our railroads, especially in view of the fact that they would apply to our railroads only, leaving their competitors free and untrammelled, compels us to inquire what other means or instrumentality may be made effective in obtaining the redress which the public seek and to which they are entitled. Certainly, a railroad, in order to be successfully managed and prosperous, in the whirlpool of competition of the present time, *must be run by brains and not by legislation; and the reforms in railroad management must come through railroad managers by means of a public pressure brought to bear upon them.*”

The bill practically permits the merchants and manufacturers of Philadelphia and Baltimore, and the railroads leading out of those cities, to make rates to points in this State, or through this State to points in other States, or in Canada even, that are wholly impracticable to our own jobbers and manufacturers, and to use the roads of this State in thus appropriating our State's commerce. So the New York City jobber, the interior jobber, and the railroads of this State are seriously threatened by this bill, which at the same time would so shackle the roads as to render them powerless to protect either themselves, or the communities on which they depend for patronage. Where there are two or more routes between any two given points, the longer route, or routes, will be forced out of that business. The longer route in one instance may be the shorter route to another destination, commencing at the same point and competing with the same road or roads. The New York Central has two lines, from Syracuse to Rochester, and from Syracuse to Batavia or Buffalo. The new and most direct line is, say, one-fourth shorter than the old line. Local tariffs in the State under this bill, must be in “proportion” to the rates on long hauls to or from the West, which are over the short line. If for any reason the Central chooses to send a part of its through business, temporarily even, over the old line, it would necessitate a revision of tariffs to every point on that branch, equivalent to a reduction of twenty five per cent in order to “proportion” rates. It would then appear that the Central was charging as much for 15 miles' transportation on the new line as it charged for 20 miles on the old line, and the terms of the bill would be again violated.

Should this bill become a law we will see our State overrun with the drummers of jobbers from other States. Boston would quickly improve the opportunity, for it can reach our lines and the State by roads wholly independent of and unaffected by this bill.

The only road in the State which this bill can touch fully is the New York Central and Hudson River Road, while those roads which are inter-State will be left in a position where they can do serious injury to the N. Y. C., and generally to the jobbing trade of the State.

While upon this point it may be well to touch upon the competition of the canal, which also has a bearing upon that section of the bill, which makes a carload the unit of shipment. It is a well known fact that a canal boat cannot do a miscellaneous way freight business, while the railroad can. A boat cannot be tied to a pier and a line of carts run to it with a few packages each for Schenectady, Amsterdam, Fonda, Yosts, Sprakers, Palatine Bridge, Fort Plain, &c., &c. The first cart may have a promiscuous lot on it; the first lot being for Schenectady and the next for Fort Plain—the next cart may have a full load for Palatine Bridge, and the next a mixed load for Syracuse, Ilion, Clyde, Herkimer, and a half dozen other stations. Now, in loading way freight cars, goods are sorted on spacious platforms, under cover, and held until there is a carload for some particular point, or until the day's work is ended, when way-cars are loaded, care being had that goods for the nearest points are nearest the car doors, so that they will unload in order as the train passes from station to station. Each car represents one-twentieth of a boat, and in loading, goods are disposed of to suit convenience in unloading. This cannot be done with the canal boat. It must take the goods as they come, and stow them as they are received. The captain cannot make a dozen or more piles on the pier, and when the day's work is done, load and stow so that the last in shall be first out. The railroad's is a continuous and multifarious transaction, while the boatman's is a special one. Once his boat is loaded the transaction is ended. The consequence is that the boatman seeks the large shippers. He necessarily avoids a way-freight transaction, and therefore offers to large shippers of through freight very low rates to induce them to concentrate shipments on his boat, while the small shipper must pay more than treble the rate. The bill compels the railroad to make its rates public, so that the boatman knows to a certainty just how much to cut under in order to get the *large shippers*, while he is unable to do the miscellaneous way business of smaller shippers on any fair terms. The inevitable effect upon the majority of shippers, should this bill pass, is therefore clear. We have also seen what must be the effect upon New

York jobbers, and again upon interior jobbers who are forced into competition with the Philadelphia, Baltimore and Boston jobbers, particularly, however, Philadelphia and Baltimore, from which cities roads lead touching all important points on both the Erie and Central roads, such as Hawley, Honesdale, Carbondale, Binghamton, Owego, Waverly, Elmira, Corning, Buffalo, Rochester, Albany, Utica, Schenectady, Oneida, Syracuse, Weedsport, Newark, Lyons, Auburn, Cayuga, Geneva, Canandaigua and various other points.

Section 2, which provides in brief, that a road shall not charge more for a short haul than for a longer one is theoretically correct, but is difficult to literally carry out, and indeed, as regards through business, it is quite impracticable in some instances. And when the carload is made the unit of shipment as Section 4 proposes, the provision relating to "the coterminous transportation of the like class and quantity" is virtually nullified. To illustrate: Under the bill the roads will be obliged to transport a carload of flaxseed for any transient shipper who may, for purposes of his own, choose to ship one carload at the same rate as the manufacturer of oil who ships scores of carloads of seed, and, also, of the product of the seed in the shape of oil and oil cake. The language of the second Section, while it obligates the roads to charge no more for a short haul than for a longer one, plainly implies that they may charge as much; but the third Section clearly contradicts this and establishes the *pro rata* principle of rates in these words:

"Nor shall any railroad corporation charge more for transporting freight from any point on its line, than a fair and just proportion of the price it charges for the same kind of freight transported from any other point."

That is, rates from any local point in the State to New York City, for instance, must be in "proportion" to rates on the same commodity from Chicago, St. Louis, or any other point to the same destination. No discrimination, literally interpreted, is absolute *pro rata*, and the moment the term is modified by the words "reasonable" or "just," a thousand doors open for as many conflicting opinions as to what would be "reasonable" and "just" under the varying circumstances and conditions of trade.

Referring again to the second Section, and the phrase, "the like class." The word "class" has various meanings, but the two commonly applied to railroad tariffs are, First—An order, or a division of commodities, grouped together on account of their common characteristics. Second—To be grouped or classed.

A "classification" on a railroad tariff is merely a matter of convenience, governed by certain rules, but in the past, necessarily varied from by special rates or contracts. Under the head of "fourth class," in tariff schedules, are placed all kinds of grain, flour, sugar and other coarse, heavy freights. In some cases it is customary to classify under the head of "Grain, all kinds." If the term "class" as used in this bill is to be defined thus, then, if the rate is reduced on corn from Buffalo to New York, we must likewise reduce, correspondingly, the rate on barley from Waterloo to New York, and if on sugar from New York to any point, the rate on pig iron from Albany must be made to correspond, and *vice versa*. A carload being the unit of shipment, the same rate must be made for a carload of wheat from Buffalo that is made on a hundred carloads of corn. The one carload of wheat may be all there is to ship, while there may be thousands of corn. Were further comment necessary, numerous other illustrations might be found in hardware, stoves, machinery and a hundred articles which ordinarily and for the sake of convenience, come under the same "class."

As stated before, the classification of freight is a matter of convenience. In reality there are no two articles governed by the same law, and, if it were not impracticable, a separate rate should be made for every article shipped. The necessities arising from an imperfect nominal classification have hitherto been met by special rates or contracts. Then again,

"Two or more railroad corporations, whose roads connect, shall not charge or receive for the transportation of freight to any station on the road, of either of them, a greater sum than is charged, or received, for the contemporaneous transportation of the like class and quantity of freight from the same original point of departure, to a station at a greater distance on the road of either of them in the same direction."

(See Section 2, lines 5, 6, 7, 8, 9, 10.)

This is apparently susceptible of several constructions. Does it mean that two roads, having a haul each of 50 miles, shall not charge more for the combined one hundred miles than either road would charge for one hundred miles of straight haul on its own road?

Does it mean that neither, for the fifty miles' haul on its road, shall charge more for the fifty than it would for fifty-one on its road?

Does it mean that one road having fifty miles' haul, and the other ten, that the rate for the combined sixty miles shall be no greater than either of them would charge for sixty miles on its own road?

Does it mean that the rate from New York to Oswego, 335 miles, shall be no greater than it is to Buffalo, 440 miles? If it does, how are the rates to be divided between the roads—*pro rata*. If not, how?

The bill does not provide for a division of rates between roads. The language of this Section is so obscure and ambiguous, as to insure troublesome complications should the bill pass. If its meaning is implied by the last interrogatory, then this is the most sweeping *pro rata* measure that has ever been introduced in a legislative body.

Under it, a hundred questions will inevitably arise that will defy any rule known to railroading, or that can be devised.

Take for instance the Hudson River division as the trunk of the tree, and the main New York Central and all the branches and laterals as the branches of the tree, the Hudson River division seems to be the principal one to which the term "original point of departure" would apply. Then, if this section is intended to cover such instances as the last interrogatory indicates, New York to Oswego and New York to Buffalo would have the same original point of departure, while from Buffalo and Oswego to New York would not. In other words it provides for getting out of New York but not for getting back again.

Again, does it mean that from a point on one road with a haul of fifty miles, to a point on another road with a haul of twenty miles, that to a point on the latter of ten miles, that the joint rate for sixty miles shall be no greater than the joint rate for seventy miles?

If it does, what is to prevent the rate from Rochester to Scranton, Pennsylvania, via Syracuse from being lower than the rate from Rochester to Binghamton via Syracuse, the road from Binghamton south being in the same Company's hands but in Pennsylvania.

Numerous illustrations might be cited, but the fact must be sufficiently apparent and so must be the utter impossibility of proportioning freight rates to distances as this bill aims to do.

Section 3 is in part a repetition of *pro rata* conditions, which it emphasizes as follows:

"Nor shall any railroad corporation charge more for transporting freight from any point on its line than a fair and just proportion of the price it charges for the same kind of freight transported from any other point."

Under any possible application this means *pro rata*, if it means anything, and here again the bill strangely conflicts with the report of the Special Committee, which says on page 74,

"A thorough consideration of all the evidence adduced upon this subject, and of the subject itself, induces the conviction that the passage of what is popularly termed a *pro rata* freight law would be prejudicial to the interests of the public. The experience of Western States in this direction ought to be a warning and a satisfactory reason for declining to bring this subject into the field of legislation in this State. While there are certain general propositions that may with propriety be laid down by the Legislature for the control of traffic managers in the adjustment of rates, within those general rules there must be permitted an elasticity of management, and freedom to exercise judgment and discretion upon the ever varying questions that constantly present themselves for action."

This Section also makes it unlawful for a road to contract with an express company, unless as many express companies as choose to do so are permitted to use the road in the same manner and on the same terms as are given to any one company. The effect can partially be imagined. A road could not run a separate car for each, nor could it allow the agents or messengers of half a dozen companies in one car. Naturally, a road would choose to allow no company the use of its road, rather than accept the alternative. This Section would kill the express business which the Investigating Committee has reported to be of great advantage to both the railroads and the public. It also prevents the encouragement of manufacturers and makes it impossible for roads in this State to preserve their business secrets from competitors out of the State, and if the Grand Trunk, Baltimore and Ohio, Pennsylvania, Lehigh Valley and the boatmen on the Erie Canal had written this section they could not have made it more effectual for their own purposes than it is as it reads.

A buyer and shipper of grain finds it more convenient to ship by rail than canal. He asks for a rate, and it is given and at once made public. The canal boatman comes along, knows the rate, and at once bids enough under it, secretly, to let the man who wants to ship by canal outbid the rail shipper. This may seem a good thing at first for the farmer, but in a short time the railroad is driven out of the competition, and the rule of secret rates prevailing on the canal, the farmer is where he was before, as to selling. But the farmer who desires to rid himself of the middleman and ship his own produce to market, but who has not raised eight thousand bushels (a canal-boat load) of one kind and grade of grain, cannot compete with his richer neighbor, who has raised that quantity or who has capital to buy what he did not raise. The illustration of the flaxseed oil manufacturer applies here. He cannot be protected in his large shipments.

The tanner who ships hides from New York and leather back, cannot have a special rate on his tanbark from the point of production to his tannery, and the speculator who wants to trade

upon his necessities for bark can buy it up and make him pay his price for it, or ship it to some other market. A practical illustration of this took place some years since, when a speculator bought all the bark of a certain section, and had not the railroads not only refused to give him a special rate, but made them for the tanners, the business of the latter would have been ruined. Hundreds of cases can be cited.

This Section will either ruin every manufacturer in the State or drive them out of it, while the other sections will drive the railroads of this State out of the great through business of the West.

Take for instance the proposition :

“No railroad corporation shall charge or receive for the transportation of freight to any station on its road, a greater sum than is charged or received for the cotemporaneous transportation of the like class and quantity of freight from the same original point of departure.”

Then again take the proposition :

“Nor shall any railroad corporation charge more for transporting freight from any point on its line, than a fair and just proportion of the price it charges for the same kind of freight transported from any other point.”

These two provisions alone if enacted into law, even without the assistance of that remarkable section of the Bill, which deliberately surrenders the railroads of this State to the use of competing cities and roads, for a minimum price of service, will erect a barrier to the business and railway interests of the State, which is simply prohibitory.

The New York Central road receives of east bound freight at Buffalo an average of about 1,500 car loads of freight per day, coming from all the different points of the West, where we are in competition with the railroads of other States and from where rates to the East necessarily vary. It is an established principle in making freight rates from competing points that the short haul governs the rate.

We must make from Chicago or from St. Louis the same rates that are made by the shorter lines of the Baltimore and Ohio Railroad, or the Pennsylvania road.

The distances are so unequal from different points, that we receive as our proportion of the rate from St. Louis to New York City one percentage, of the rate from Chicago to New York another percentage, of the rate from Louisville another, and so on. And so variable are the distances, that although the rates from all western points may be made upon a common basis by all the competing lines, on no two points do we

receive the same percentage, as our proportion for the haul between Buffalo or Suspension Bridge and New York. From all points of the West under this bill, every carload of freight when it arrives at Buffalo or Suspension Bridge must be stopped and the Way-Bills examined to ascertain what rates we must charge from all stations on our road.

It must first be ascertained from those Way-Bills where the freight comes from and what we are to receive, and then we must make our tariff from Buffalo and from Suspension Bridge to New York to correspond with our proportion of that through rate which yields us the smallest percentage; after having established that, the rates from every station on the road must be made in "proportion."

To adjust our tariffs to a single train arriving at the western terminus, bound East, would involve the labor of days, and then after having made them, they would need to be put in form to place in the hands of our agents, that the road might not for a like and contemporaneous service, "charge more for transporting freight from any point on its line, than a fair and just proportion of the price it charges for the same kind of freight transported from any other point."

Would the receivers of through freights long submit to such delays as would be necessary before it could go forward? If such confusion and loss of time can result from a single instance, what must be the effect when there are almost daily changes in rates from Western points, governed as they are by the competition of railroads running through other States. by the water lines and by railroads running through Canada!

If the consignees were so friendly to our railroads and so indifferent to their own interests as to be willing to submit to such delay and to the consequent losses that changes in the markets might make, our Western connections would not consent that their cars should lie idle waiting for us to see what we would do with our local freight tariffs.

The Lake Shore Railroad would very soon turn its business to the Pennsylvania Railroad at Erie; the Michigan Central would turn its business by way of the Grand Trunk; the Great Western of Canada finding itself ground between the upper and nether mill stones would do what its shareholders have been contemplating—bring about a consolidation with the Grand Trunk and work all their business with them; *and in less than sixty days from the time this bill becomes a law,*

and goes into effect, these long lines of cars you see passing over the New York Central Road, occupying at times to their fullest capacity the extra tracks which have been provided for this traffic, will cease to run.

What will be the consequence of this? Undoubtedly dividends will cease and the railroads will have all they can do to earn their expenses and the interests on their debts.

As a natural consequence, local freight tariffs will be largely increased; and even though there are no restrictions placed upon the roads in the matter of special rates, for the assistance of manufacturers and merchants in the State, we would be compelled to adopt such rates upon all available business as would be an onerous burthen upon the farmer and upon the manufacturer, and the merchant as well. As matters are now, special rates are made for millers, on grain from Buffalo to points on the Central road, and for flour to points East. It is certainly reasonable to assume that the steady business of these millers entitles them to a lower rate than the transient shipper of a single carload.

Section 4 however makes a carload the unit of shipment, the fallacy of which idea is clearly illustrated in Mr. Grady's Minority Report.

It cannot be that any member of this Committee believes that the man who ships a car load of boards to build a fence with, should necessarily have as low rates as the manufacturer, who turns lumber into reapers and mowers, furniture, etc., and ships the manufactured goods, or that the man who uses one car load of coal a year for domestic purposes is entitled to as low rates as iron foundries, blast furnaces and other similar industries, or that coal, being fourth class freight, should be charged exactly the same for transportation as iron, or pig metal, because all are nominally in the same class; or that sugar, being also fourth class, must be placed at the same rate for contemporaneous service. Or, that in order to avoid the classification requirements of this bill, a separate rate must be made for each and every commodity.

Once more as to the "unit of shipment" in grain transportation. The New York Central and Hudson River Road has at New York an arrangement with the New York Produce Exchange under which grain is graded. The cars arrive at all hours of the night, but can only be graded in daylight, and though there may be forty-five cars of wheat in one train, consigned or belonging to one man, each car may, under the grading process, be separated from the rest and actually become divided. On the other

hand there are large shipments made directly from Western elevators, where the grain has already been inspected, graded and shipped in full cargoes of one kind to Buffalo, transferred thence to the elevators, and from the elevators to the cars. The identity of the grain being preserved and no inspection at New York needed. In such cases the cars can be unloaded immediately upon arrival, night or day, and in brisk times the round trip of the cars can be made in from 72 to 80 hours. Is it not just that a less rate should be made in such cases than when the grain has to be held over awaiting inspection, and the cars cannot make the trip in less than about 100 hours? And is it just that the one car which requires 24 hours to load at a way station, and as much to unload, in addition to the time on the road, should be taken at a rate proportionate to the rate on any large number of cars that come to us from an elevator or connecting road?

In view of the deductions and conclusions of the Special Committee on Railroads, as given in their report, it is almost incredible that this Bill could have emanated from the same Committee. The Bill is in open conflict with the deductions made, based upon the testimony as the following extracts from the report, pages 71, 72 and 73 will show.

"The problem of transportation is an unsolved one and from its very nature must ever remain so. Each generation must determine for itself. The constantly shifting conditions which surround it, the ever-changing elements that enter into it, the continual offerings which genius contributes to cheapen and facilitate transportation, present an ever-shifting phase to this kaleidoscopic question, calling for an ever-varying solution. The telegraph, the steel rail, the improved motor, the Atlantic cable and kindred causes, have revolutionized and are continually revolutionizing commerce. The tariff of a dozen years ago seems extortion in the light of present charges."

Again the Committee argues with great force against its own bill as follows:

"The New York Central is the only road engaged in the carriage of freight to and from the West wholly within our jurisdiction. The Erie is a New York corporation, but runs through three States and has its eastern terminus in a foreign State. Even the port of New York, that contains the city of our pride and our solicitude, is not wholly within our control. The eastern borders of her harbor are marked by the coast of a foreign State. Thirty-four per cent of New York's business is done by powerful rivals of our own roads that tap the granaries of the West by the shortest and most direct route. We might enact laws that would drive the business from our own roads without improving the condition of affairs in this State. Indeed, such a course would aggravate matters, for the interests of these rival roads centre in rival cities.

"We might cripple the prosperity of New York; we might enact laws that would build up Jersey City and transfer the legitimate growth of New York to the Jersey coast. It is as imperative that such consequences be avoided as it is that present wrongs be redressed. While the laws of commerce ignore political divisions wholly, our jurisdiction is circumscribed by the limits of the State of New York.

"States divided by navigable waters, which are everybody's highway, present borders which the two systems of traffic must respect, and the breaking of bulk and terminal expense incidental thereto is unavoidable ; but the artificial line of the surveyor, marking a political boundary, though it may determine where a man shall vote or pay his taxes, least of all lines has neither breadth nor thickness in determining the currents of trade. Whatever prominence may be attached to State individuality and State rights, in a commercial sense, we are eminently a nation, and the sooner that fact is recognized the better it will be for our commerce. There is not the slightest reason why the Liverpool merchant should not buy his grain, graded, in Kansas City, by cable, and have it placed alongside the dock at Liverpool with but one intermediate handling—the transfer from car to vessel at the seaboard. In the close competition of the present age transportation must be cheapened to that extent, and it were absurd to expect produce to be handled at New York for the sake of enabling those who handle it to make a profit. The point of production will seek the point of consumption by the cheapest and quickest route, and kings and parliaments are powerless to prevent it. The complaint that New York makes as to the loss of jobbing trade, Chicago must make and St. Louis also. Certainly a percentage of the complaints lodged against railroads is due to the inexorable laws of trade."

And, in the following words, the Committee plainly recognize the objections that have been advanced to that section of the Bill which would place the roads of this State at the mercy of roads located chiefly in other States, and operated in the interest of other Cities than New York City :

"The complication of jurisdiction is emphasized by the peculiarities of our geographical position. The Baltimore & Ohio and Pennsylvania railroads reach New York city by lighterage and ferry from the Jersey coast without anywhere coming within our jurisdiction. The Erie road has thirty-five points of actual contact and competition with other roads (Testimony, p. 2845). Many of these points of contact are with roads leading to Philadelphia and Baltimore. The New York Central has nine points of actual contact with roads running or connecting through to Philadelphia and Baltimore. Many of these competing roads are foreign corporations, running but a few miles within the State, and, therefore, could be controlled by absolute law to but a limited extent."

In conclusion I have only to say, that the penalty in Section five will force roads to make rules so rigid that they must be unyielding, lest designing men make a business of manufacturing grounds on which to sue for the penalty.

The bill generally, and the penalty finally, prohibits the railroads from encouraging or assisting manufacturers. It is impossible that the railroads can make the carload a unit and at the same time carry the coal and sand for the glass manufacturer, the lumber for the furniture maker, the seed for the oil manufacturer, the material for the builder of reapers, mowers and threshing machines, at rates low enough to enable them to manufacture with any profit to themselves, if the same terms must be given to every man who may make one single shipment.

No opportunity is allowed under the bill, for the exercise of any judgment whatever. Every principal of transportation es-

tablished by necessity and experience is utterly ignored, and as a prominent metropolitan journal has said, "it is difficult to judge whether such measures as this are the result of criminal ignorance or pure cussedness; or whether they are part of a deep laid plan to rob the City and State of New York of commercial supremacy, and enrich rival interests."

Pass this bill, gentlemen, and you cripple every industry in the State, drive out of it the great trade of the West, and turn to other seaboard cities than New York the great produce trade of the West and the imports from Europe.

Can you believe that, having forced the roads of this State to give up this business, the roads leading to competing cities will long allow the trade to remain in New York?

We see the products of our country exported under foreign flags; yet those flags come to our great seaport. Pass this bill, gentlemen, and you will see these great lines of steamers and fleets of sail crowding the harbors of other cities than our own metropolis. Having no interest in our State or city, they will go where they find the business; and when it is too late for repentance, you will find you have caused our business to pass away from the State and the city of our pride, our industries paralyzed, and our railroads ruined.

This, gentlemen, is no idle imagination. I point to the report of the Committee for confirmation, and I have only enlarged upon the report as given by themselves.

B. B. 15 H. 124



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